IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 215 of 1999(A)

CC.176/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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APPELLANT/COMPLAINANT:

M/S.SOUMYA SAREES, BELLARD ROAD, KANNUR - 1,
REPRESENTED BY ITS MANAGING PARTNER GIREESH,
S/O. KUNHAMBU, CHETTIPEEDIKA, KANNUR - 4.

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENTS/ACCUSED:

P.S.SUNDARAM, PARAMELPADY STREET,
KONDAZHI P.O., WADAKKANCHERY, THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.A. No. 215 of 1999

Dated this the 31st day of January, 2007

Judgment

This appeal is filed against the acquittal of the accused under section 256 of the Code of Criminal Procedure for the absence of the complainant. It is the case of the appellant that he was absent when the case was posted for evidence. The court noticed in the order that after the court took cognizance, the complainant was absent almost on all days. However, justice has to be administered. Court also cannot acquit the accused mechanically on the absence of the complainant unless presence of the complainant is absolutely necessary. Considering all the facts of the case and also considering the fact that accused was appearing before the court, we allow the appeal on payment of a cost of Rs.1,000/- which shall be paid to the accused or to his council within three weeks from today. Party should produce copy of the memo showing payment of the amount of cost and complainant should appear before the Magistrate's court on 26.3.2007. Accused also should be present on that day for proceeding further.

Appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A.No.215 of 1999

Judgment

31-1-2007